

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF A) APPEAL NO. 07-A-2488
THOUSAND HILLS, LLC from the decision of the) FINAL DECISION
Board of Equalization of Kootenai County for tax) AND ORDER
year 2007.)

COMMERCIAL PROPERTY APPEAL

THIS MATTER came on for hearing November 28, 2007, in Coeur d'Alene, Idaho before Board Member Linda S. Pike. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Chris Cheeley appeared for Appellant. Assessor Mike McDowell and Appraisers Louise Weed and Donna Hope appeared for Respondent Kootenai County. This appeal is taken from a decision of the Kootenai County Board of Equalization (BOE) denying the protest of the valuation for taxing purposes of property described as Parcel No. C82770010060.

The issue on appeal is the market value of an improved commercial property.

The decision of the Kootenai County Board of Equalization is reversed.

FINDINGS OF FACT

The assessed land value is \$535,126, and the improvements' valuation is \$674,727, totaling \$1,209,853. Appellant requests the land value be reduced to \$326,675, and the improvements' value remain at \$674,727, totaling \$1,001,402.

The subject property is an improved .607 acre commercial lot located in Coeur d'Alene. Appellant purchased subject lot in 2003 for \$180,000 and built the attached commercial improvements in 2004. Taken together, the improvements comprise a four-store strip mall, one of which is owned and operated by Appellant. The remaining store sites are rented by Appellant to other operators. Subject is located on Canfield Avenue, approximately one block east of Highway 95. Subject is considered a pad site and was valued as such.

Appellant agreed with the assessed value of the improvements, however, opposed the

nearly 60% increase in subject's land value. Appellant speculated subject's excessive value increase over the prior year dated back to subject's purchase in 2003. Appellant purchased subject for \$180,000 as an unimproved commercial lot. Subject's assessed value at the time was \$250,000, which was reduced to approximately \$180,000 after Respondent learned the price Appellant paid for the parcel. None of the adjacent or nearby lots were correspondingly reduced, and the owners of these lots did not appeal; their values remained higher than subject. Until subject's area was re-appraised for the 2007 tax year, subject and adjacent lots have increased in value at similar rates. Appellant believed subject's value increase in 2007 was the cumulative effect of neighboring lots being over-valued since 2003. Appellant's position is the County used the "over-valued" lots to justify subject's assessment increase.

Appellant challenged Respondent's use of the income approach because only subject's land value is under appeal and the income approach relies heavily on the rental income of improvements. In the alternative, if the income approach is deemed appropriate, Appellant estimated it would result in subject's total value being approximately \$1,000,000. This value was calculated by consideration of the following factors: reducing the monthly rent Appellant pays self to market rent, factoring in a vacancy rate, including appropriate management fees and maintenance budget, as well as, applying a capitalization rate reflective of risk and the local market.

Appellant's primary argument, however, centered on the position subject was assessed inequitably compared to other commercial pad sites in subject's area. To support this position, Appellant submitted assessment and other information for fifteen (15) nearby commercial properties, one of which was unimproved. Appellant provided narratives about all the sites and included other details in a spreadsheet. The lots were between .504 and 1.596 acres in size with

assessed values between \$9.37 and \$14.00 per square foot, or an average of \$11.78 per square foot. Subject is .607 acres with an assessed land value of \$20.25 per square foot.

Appellant extensively described why the properties included in the spreadsheet were superior to subject. We will not list all the individual details here, but will note a few. Most emphasized by Appellant were the superior locations of the referenced properties and their corresponding traffic counts. The 2006 traffic counts for the properties, obtained from the Idaho Department of Transportation (IDOT), were between 4,600 and 44,000 average cars per day.

IDOT did not have a current traffic count for Canfield Avenue, where subject is located, because the street is not considered a thoroughfare. Canfield is instead regarded as a street that solely provides access for local businesses located on Canfield Avenue. The last traffic count for Canfield Avenue was 1,100 in 1989. Appellant noted the traffic count on Hanley Avenue (1 block south of Canfield) was 4,200 in 1989. While it was conceded traffic counts had likely increased on both streets since 1989, Appellant maintained Hanley currently accommodates much more traffic than Canfield. To illustrate this, Appellant pointed to the fact that Canfield has only two lanes, while Hanley is a four-lane street.

Of particular import to Appellant was property 6 on the spreadsheet. It was described as the most prime site of all the properties discussed. It is located on the corner of Highway 95 and Wilbur Avenue (one block north of subject). The lot is .661 acres and assessed at \$14.00 per square foot; the highest assessed value of all properties on Appellant's spreadsheet. The 2006 traffic count for this particular location was of 40,000 cars per day. Appellant contended the property was superior to subject in almost every way, yet was assessed \$6.25 less per square foot than subject. Similar discrepancies were noted concerning the other properties on the list, but Appellant declared this property most clearly illustrated subject was over-valued.

Appellant also challenged Respondent's sale properties, primarily on the basis of location. Sales 3 and 4 were conceded by both parties to be inferior to subject in terms of location, so Appellant contended they should not be considered. Also noted by Appellant were the lot sizes, which were approximately half the size of subject. Appellant pointed out that smaller lots typically sell for more per square foot, which must be considered when the properties are compared to subject's per square foot value. Sales 2, 5, and 6 were argued to be far superior in terms of location. As such, Appellant argued they should likewise not be considered in valuing subject.

Appellant noted Sale 1 reportedly sold for \$821,000, yet was only assessed at \$473,700. Appellant questioned why the property was assessed at only half the sale price. Respondent provided no explanation for the apparent discrepancy.

Respondent first explained subject's area was re-appraised for the 2007 tax year. Respondent noted subject's area had seen a noticeable amount of commercial growth in recent years and contended this growth supported subject's large value increase. It was argued the average traffic count on Canfield Avenue had increased since 1989; a fact conceded by Appellant. Neither party, however, was able to provide current traffic data for the street. Also mentioned was subject's land value was reduced by 10% following a discussion with Appellant prior to the BOE hearing.

It was contended commercial pad sites in subject's area were uniformly assessed. Respondent pointed to assessment data of seven (7) commercial properties located in subject's neighborhood. The properties were valued between \$20.36 and \$22.50 per square foot.

Respondent determined the income approach was most appropriate to value subject and other commercial pad sites. The income approach determines the total value of a property.

Because Appellant only challenged subject's land value, the total value was calculated and the improvement value was then extracted; the remaining value was then assigned to the land. It was explained national and regional data was used to determine the market rent and capitalization rates (7.5% in the current case) applied to subject.

Respondent contended vacant lot sales in subject's area were used to further support the land value. Six (6) vacant commercial lot sales were presented. The lots were between .321 and 1.235 acres in size with time-adjusted sale prices between \$17.62 and \$22.28 per square foot. Three sales occurred during 2004 and the other three were from 2006. Sales 4 and 5 had small improvements attached at the time of sale, which were immediately demolished by the buyers. Respondent removed the improvement values from the sales prices for comparison with subject.

Respondent also considered the cost approach to value subject. This approach resulted in an improvement value of \$657,836, which was noted to be near the \$674,727 improvement value derived from in the income approach.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Idaho requires property be assessed at market value for the purpose of taxation, as defined in Idaho Code § 63-201 (10):

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing sell, under no compulsion to sell, and an

informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

The Idaho Supreme Court has recognized three approaches for determining market value.

[T]here are three primary methods of determining market value: the cost approach, in which the value as determined by new cost or market comparison is estimated and reduced by accrued depreciation; the income approach, applicable to "income producing property" in which a capitalization rate is determined from market conditions and applied to net income from the property to determine appraised value; and the market data (comparison method) approach, in which value of the assessed property is ascertained by looking to current open market sales of similar property. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979).

Respondent utilized the income approach to support subject's value. While this is a recognized appraisal method, Appellant raised questions concerning its use in this case. In particular, the capitalization rate and market rent figures used in the valuation formula. Respondent testified the rates were obtained from federal and regional data tables. Appellant questioned the data's applicability and reliability as it related to subject's specific area.

Also troubling to Appellant was only subject's land value was being appealed, whereas the income approach determines the total value of a particular property. Respondent determined the value of subject's improvements and then extracted them to arrive at an indicated land value. It was argued vacant commercial lot sales further supported subject's land assessment.

Appellant questioned the comparability of Respondent's land sales. Sales 3 and 4 were conceded by Respondent to be inferior to subject in terms of location. Appellant argued sale 2 was superior to subject because it was located on the corner of Highway 95 and Hanley Avenue. Sales 5 and 6 were similarly argued to be superior to subject in terms of location. Sale 5 was

located on the corner of Highway 95 and Canfield. Appellant noted the property sold for \$3 less per square foot than subject's assessed value. Sale 6 was located near the bridge with views of the river. Appellant argued the property should not even be on the list.

The Board is inclined to agree with Appellant's position regarding the comparability of the sale properties presented by Respondent. As conceded by Respondent, Sales 3 and 4 are inferior to subject in terms of location. As such, there is little support to use these sales to value subject. Concerning the other sales, the record clearly indicates properties located on Highway 95 are not comparable to subject on the basis of significantly higher traffic counts. It is also difficult to accept Sale 6 as being comparable because of its location near the river. Interestingly, Respondent did not dispute Appellant's claims regarding the lack of comparability between the sale properties and subject.

Both parties also addressed the uniformity argument, however, arrived at vastly different conclusions. Concerning uniformity, the Idaho Supreme Court has held, " . . . to require a standard of absolute accuracy and uniformity would be futile. These ends are the ideal, and where the assessor deviates excessively relief will be granted" *Title & Trust Co. v. Board of Equalization*, 94 Idaho 270, 277, 486 P.2d 281, 288 (1971). While mathematical exactitude is not required, there is a wide discrepancy between the assessments presented by the parties in this case.

Respondent provided assessment information on seven (7) properties from subject's same "retail corridor". The lots ranged between .484 and .918 acres and were assessed between \$20.36 and \$22.50 per square foot. Appellant presented land assessments for fifteen (15) commercial properties. The lots were between .504 and 1.596 acres and assessed between \$9.37 and \$14.00 per square foot. Subject is .6070 acres with an assessed land value of \$20.25

per square foot.

Nearly all the properties discussed by Appellant involved properties argued to be superior to subject, yet were assessed considerably less. Many included new improvements and were argued to have better locations than subject. Appellant most clearly illustrated the location argument by providing 2006 traffic count data, obtained from IDOT, for each of the properties. Nearly every property on Appellant's list was argued to have a much higher traffic count than subject. While the 2006 traffic count for subject's street (Canfield) was unobtainable, Respondent did not dispute that subject had a lower traffic than the properties on Appellant's spreadsheet. Most compelling was property 6, which had an average daily traffic count of 40,000, yet was only assessed at \$14 per square foot. The property was located on the corner of Highway 95 and Wilbur Avenue; approximately one block west and one block north of subject. Appellant noted this property was assessed higher than all other properties in Appellant's exhibit spreadsheet, and was still assessed \$6.25 less per square foot than subject.

While Respondent's assessment information concerned seven (7) commercial properties proximate to subject, questions of comparability were convincingly raised by Appellant. Appellant pointed out three of the properties were corner lots located on Highway 95. As noted above, properties on Highway 95 were shown to be superior commercial locations compared to properties on Canfield. Two of the properties were located on Hanley Avenue, which was also argued to be superior to subject on the basis of traffic count. The two remaining properties located on Canfield were near subject but closer to Highway 95.

After considering all evidence and testimony offered in this matter, Appellant has convinced this Board by a preponderance of the evidence that subject was over-valued. There are many questions concerning the comparability of the assessment and sale properties

presented by Respondent. Additionally, Respondent did not effectively challenge or otherwise dispute Appellant's evidence. Accordingly, the decision of the Kootenai County Board of Equalization is reversed, thereby lowering subject's assessed land value to \$326,675. Subject's improvement value will remain unchanged, resulting in a total assessed value of \$1,001,402.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Kootenai County Board of Equalization concerning the subject parcel be, and the same hereby is, reversed, lowering the assessed value of the land to \$326,675, for a total assessed value of \$1,001,402.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant.

MAILED APRIL 3, 2008